

APPEAL NO. 022440
FILED NOVEMBER 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 9, 2002. In Texas Workers' Compensation Commission Appeal No. 021524, decided July 31, 2002, the Appeals Panel had remanded the case back "for clarification and/or reexamination by the designated doctor" regarding an impairment the designated doctor had assessed for "ulnar nerve sensory deficits" after the hearing officer determined that the compensable injury does not include "bilateral ulnar nerve neuropathy." The hearing officer, on remand, determined no further hearing was necessary, "carved out" the impairment assessed for the noncompensable ulnar nerve deficit and concluded that the appellant's (claimant) impairment rating (IR) was 13%.

The claimant appealed, contending that the designated doctor had not been given an opportunity to clarify his rating or reexamine the claimant as directed by the Appeals Panel and that therefore the designated doctor's 15% IR should be adopted. The claimant contends that "there is absolutely no medical evidence to support a 13% [IR]." The respondent (carrier) responds that the hearing officer's action was proper and urges affirmance.

DECISION

Affirmed.

The background facts and pertinent medical reports are recited in Appeal No. 021524, *supra*. The hearing officer in that case had determined that the compensable injury did not include ulnar nerve neuropathy. The designated doctor had assessed a 15% IR which included a 2% impairment for ulnar nerve sensory deficit (in addition to ratings for a cervical injury not at issue here), explaining that the ulnar nerves showed abnormalities specifically at the elbow. The hearing officer, in Appeal No. 021524, had adopted the designated doctor's report stating as a basis for her decision "while the Claimant failed to prove an ulnar nerve neuropathy, the upper extremity sensory deficits stem from the cervical injury."¹

The hearing officer in the instant case made the following commentary:

The Appeals Panel is correct in its assertion that the designated doctor never made that connection. In fact, he alleged a wrist injury as opposed to an elbow injury. Rather, the Hearing Officer based her factual finding on the testimony of [Dr. X], the Carrier selected required medical examiner, and whose testimony indicated that damage to the nerve fibers

¹ We identified the doctor who made that connection to be the treating doctor, when in fact it was the carrier's required medical examination (RME) doctor.

in the neck might contribute to the ulnar nerve pain. However, as the Appeals Panel wrote in its decision;

In the absence of a similar statement by the designated doctor, the Hearing Officer cannot infer from the evidence, as it exists, that the designated doctor rated the ulnar nerve sensory deficits as part of the compensable injury to the cervical spine. Accordingly the evidence does not support the Hearing Officer's [IR] determination. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986);

The Hearing Officer incorrectly inferred evidence from [Dr. X] to the designated doctor's report. Therefore, the correct [IR] is 13% and no further evaluation is necessary.

The claimant objected to this procedure asserting that the designated doctor had not been given an opportunity to amend or clarify his report or reexamine the claimant. The claimant asserts that the hearing officer failed to "follow the purpose" for the remand and there was no medical evidence to support a 13% IR. In principle, we agree with the claimant that it was our intent that the designated doctor either clarify his rating and/or reexamine the claimant. However since we cannot remand the case again (see Section 410.203(c)), we hold that the hearing officer's action does not amount to reversible error. We note that we have, in the past, affirmed a hearing officer's finding on the IR when the hearing officer, in a simple arithmetical computation, had subtracted an amount of the IR in a designated doctor's report that was assigned for an injury found not to be compensable. Texas Workers' Compensation Commission Appeal No. 991459, decided August 26, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. In this case the elbow impairment was clearly identified, and the hearing officer in a simple arithmetical computation subtracted the 2% from the designated doctor's IR. The hearing officer clearly considered Dr. X's testimony and commented that she had incorrectly inferred that evidence to the designated doctor.

After review of the record before us and the complained-of determination, we have concluded that there is sufficient support for the hearing officer's decision. Cain, *supra*.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge